

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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2004 JUL -7 P 2:53

REGAL FABRICS, INC.,

Plaintiff,

v.

KOBA, INC., an Illinois corporation;
IBR CORPORATION, d/b/a Harbortown Division,
an Illinois corporation; and
SHOPKO STORES, INC., a Wisconsin corporation,

Defendants.

Civil No: 04-10961 RWZ

DEFENDANTS'
MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

Defendants Koba, Inc., IBR Corporation, and ShopKo Stores, Inc. (collectively, "Defendants"), hereby move this Court, pursuant to Fed. R. Civ. P. Rule 12(b)(6), to dismiss Count II of plaintiff Regal Fabrics' ("Regal") complaint.

On May 14, 2004, Regal filed the instant law suit alleging that the conduct of the Defendants constitutes copyright infringement and unfair and deceptive trade practices under Mass. Gen. Laws ch. 93A § 2.

Section 301 of the Copyright Act of 1976 (17 U.S.C. § 301) preempts a claim for unfair and deceptive trade practices under Mass. Gen. Laws ch. 93A. Regal's state-law claims under Chapter 93A seek to protect a matter within the scope of federal copyright law and are, therefore, preempted by the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, as amended.

Additionally, Mass. Gen. Laws ch. 93A § 11 requires that the acts and transactions underlying the case must have occurred "primarily and substantially" in Massachusetts.

Plaintiff's complaint does not make allegations of copyright infringement that took place primarily and substantially in Massachusetts.

For the reasons set forth herein and more fully in Defendants' memorandum in support of their Motion to Dismiss, this Court should grant Defendants' Motion to Dismiss Count II of the Complaint.

Respectfully submitted,

KOBA, INC., IBR CORPORATION, and
SHOPKO STORES, INC., Defendants,

By their attorneys,

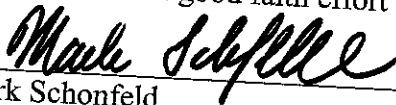


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Dated: July 7, 2004

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1, I hereby certify that I have conferred with counsel for the Plaintiff on July 6, 2004 in a good faith effort to narrow areas of dispute related to this motion.



Mark Schonfeld

CERTIFICATE OF SERVICE

I, Mark Schonfeld, hereby certify that on this 7th day of July, 2004, I served a copy of the foregoing by mailing first class, postage prepaid, to:

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